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# Refusal to grant integration assistance – law and practice

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**S**towarzyszenie  
**I**nterwencji  
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## **REFUSAL TO GRANT INTEGRATION ASSISTANCE – LAW AND PRACTICE**

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## **LIST OF CONTENTS:**

<b>1. INTRODUCTION.....</b>	<b>4</b>
<b>2. REFUSAL TO GRANT ASSISTANCE TO FOREIGNERS UNDER THE INDIVIDUAL INTEGRATION PROGRAMME – LAW AND PRACTICE.....</b>	<b>5</b>
<b>3. STATISTICAL DATA OBTAINED FROM INSTITUTIONS IMPLEMENTING THE <i>IPI</i> .....</b>	<b>21</b>
<b>4. SUMMARY AND CONCLUSIONS .....</b>	<b>28</b>
<b>REFERENCES.....</b>	<b>32</b>

## 1. INTRODUCTION

Persons who have been granted refugee status or subsidiary protection may make use of Individual Integration Programmes run by District Family Support Centres (*PCPR*) or City Social Assistance Centres (*MOPS*). The main aim of the programmes is to facilitate overcoming of language, material and social barriers in the everyday functioning of the migrant and also to mitigate experiences linked with the situation which caused granting of refugee status or subsidiary protection<sup>1</sup>. The Individual Integration Programme is a written contract drawn up between a person benefiting from assistance and a District Family Support Centre (*PCPR*) defining mutual obligations and method of cooperation enabling integration<sup>2</sup>.

Irrespective of the criticisms that have been voiced for many years by NGO's and the UNHCR concerning the *IPI* and the unsatisfactory results of evaluation of the functioning of these programmes<sup>3</sup>, one has to agree that it is a fundamental form of help which foreigners can rely on directly after being granted protection in Poland, and in the case of a significant number of forced migrants' families, their very existence depends on it.

However, potential beneficiaries of the *IPI* encounter a series of barriers to access to integration help. Failing to comply with the time limit for filing a petition for integration support (which is 60 days from receiving a decision granting refugee or subsidiary protection

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<sup>1</sup> W. Klaus, J. Frelak, *Ewaluacja funkcjonowania instytucji społecznego wsparcia m. st. Warszawy w zakresie właściwej realizacji praw przymusowych migrantów (Evaluation of the functioning of social support institutions in Warsaw in terms of correctly fulfilling the rights/entitlements of forced migrants)* SIP and ISP, Warsaw 2009.

<sup>2</sup> J. Frelak, W. Klaus, J. Wiśniewski (red.), *Next stop Poland. Analysis of refugee integration programmes in Poland*. ISP, Warsaw 2007.

<sup>3</sup> J. Frelak, W. Klaus, J. Wiśniewski (ed.) *Next stop Poland. Analysis of refugee integration programmes in Poland*, Instytut Spraw Publicznych (Institute of Public Affairs), Warsaw 2007, in Polish, K. Wencel, *Needs and tasks for Poland in the field of integration of citizens of third countries*, "Analyses Reports Expert Opinions" Association for Legal Intervention no. 2/2008, <http://www.interwencjaprawna.pl/docs/ARE-208-integracja-obywateli-pa.pdf>. See M. Ząbek, *Funkcjonowanie i skuteczność Indywidualnych Programów Integracyjnych. Raport z badania pilotażowego (Functioning and effectiveness of Individual Integration Programmes. Report from a pilot study)*, IEiAK UW, Warsaw 2010 (study carried out in cooperation with UNHCR and WCPR).

status) or having a conviction for an intentional crime are presently the most serious obstacles to benefiting from the Individual Integration Programme by persons holding these statuses. These obstacles are very clear to organizations providing legal support to foreigners in their everyday practice. The problem also lies in the fact that the negative consequences of a conviction affect not only the perpetrator, but also their entire family.

The aim of the presented research was to analyse barriers to access to social assistance by collecting data and information about the most common causes of Individual Integration Programme support refusals. The report consists of two main parts. In the first part, we analyze the issue of participating in Individual Integration Programmes, interpreting the issue from the point of view of existing laws. We also review selected decisions declining to grant integration assistance. In the next chapter, we present collected quantitative data regarding refusals to grant integration support by social assistance institutions in the years 2006-2009. These data are presented along with additional information provided by social workers working with foreigners. This report does not constitute a comprehensive analysis of the Individual Integration Programmes.

## **2. REFUSAL TO GRANT ASSISTANCE TO FOREIGNERS UNDER THE INDIVIDUAL INTEGRATION PROGRAMME – LAW AND PRACTICE.**

### **2.1. Legal refusals to give integration assistance to a foreigner**

Up until 2008, only persons having a recognized refugee status had the right to assistance aimed at supporting the process of integration of foreigners in Poland under the Individual Integration Programme (*IPI*). In March 2008, however, a new form of protection for foreigners residing in the Polish Republic was introduced – subsidiary protection. The Act on Social Assistance was amended on 12 March 2004<sup>4</sup>, expanding the list of entities entitled to receive integration assistance by adding a new group of eligible persons<sup>5</sup>. This caused a rapid increase in persons applying for these benefits. Between the beginning of 2009 and mid-2010, from out of more than 13,500 applicants, a total of 2,555 persons received subsidiary

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<sup>4</sup> Dz. U. (Journal of Laws) 2004. No. 64 item 593 with later amendments.

<sup>5</sup> Act of 18 March 2008 amending the Act on granting protection to aliens within the territory of the Republic of Poland and also certain other acts, Journal of Laws 2008, No. 70, item 416; Act of 12 March 2004 on Social Assistance, Journal of Laws 2008, No. 115, item 728 with amendments.

protection<sup>6</sup> and 181 were granted refugee status. It follows that in a period of barely one and a half years, three thousand foreigners were entitled to integration assistance.

The Act on Social Assistance provides for the possibility of suspending or discontinuing integration assistance. This happens when, amongst other things, a foreigner persistently, through their own fault, does not fulfil obligations set forth in the programme, does not attend – without justification – Polish language courses, makes use of assistance in a way that is not consistent with the purpose for which it was granted, or else gives false information about their life situation. Assistance is also withheld in the case of criminal proceedings being launched against an alien – until such proceedings are terminated. Moreover, refusal to continue assistance occurs when an alien who has previously had their assistance suspended and then reinstated, again behaves in a defined way, thus violating principles of the agreement entered into under the *IPI*, is deprived of refugee status or subsidiary protection is withdrawn, or, finally, has been convicted of an intentional crime. The latter is covered by Article 95 Section 4 point 2 of the Act on Social Assistance, which states that refusal to continue assistance occurs in cases where an alien has been convicted of an intentional crime.

Refusal to grant assistance also occurs in the case of non-compliance with the deadline for submitting an application for assistance, i.e., 60 days from the moment of receiving the decision to grant refugee status or subsidiary protection. A second series of cases of frequent deadline exceeding was linked with the statutory conversion of tolerated stay into subsidiary protection. Under the law, this conversion of status occurred in relation to foreigners who had received permission for tolerated stay before the amendment to the Act on granting protection to foreigners came into force on 18 March 2008. Then persons entitled to receive integration support were obliged to submit an application by an absolute deadline of 29 August 2008. After this deadline, this entitlement expired. In accordance with the doctrine and rulings (decisions) of administrative courts, both deadlines described above are substantive law deadlines/periods and as such, the deadlines cannot be extended under Article 58 Code of Administrative Proceedings, irrespective of the cause of delay<sup>7</sup>. For a substantive deadline relates to a period in which rights or obligations of a party may be

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<sup>6</sup> UdSC (Office for Foreigners) data, <http://www.udsc.gov.pl/Zestawienia,roczne,233.html>.

<sup>7</sup> Cf.: decision of the Regional Administrative Court (WSA) in Warsaw of 02.12.2008 (ref. VI SA/Wa 2080/08).

acquired and its violation causes expiration of entitlements of a substantive nature<sup>8</sup>. The right to apply for integration assistance is considered just such an entitlement.

In interpreting the provisions of the Act on Social Assistance, attention should be paid to the logic of the order in which they are arranged in the Act. The initial articles of Chapter 5 of the Act indicate who is entitled to assistance and on what basis (Articles 91 and 91a). Next, successive articles describe the way of providing assistance and the rights and obligations of its beneficiaries (Articles 92-94); the final articles of the chapter deal with terminating benefits that have already been granted. Article 91 of the Act on Social Assistance only requires that potential beneficiaries of assistance possess a defined legal status (refugee status or subsidiary protection) and have submitted an appropriate application within the period indicated in the provisions. In this area, the legislature has not formulated other limitations concerning potential beneficiaries of assistance. The only exception to this principle is provided for in Article 91 Section 11 – the spouse of a Polish citizen is not entitled to assistance. Thus, since in this place the legislature has not indicated other exceptions to and bases for refusal to grant benefits, it should be assumed that it has simply not foreseen them. This assumption is confirmed by, for example, a lack of any explanation for the legal solutions introduced in this field. For, wishing to understand the rationale behind introducing the possibility of withholding assistance due to conviction for a crime committed intentionally, which appeared for the first time in the Ordinance of the Minister of Labour and Social Policy in 2000<sup>9</sup>, one should look at the justification of the draft legislation. Unfortunately, neither in the original nor in successive amendments has it been explained what the legislator was guided by when introducing such a provision.

From the above it follows that provisions concerning refusal to provide benefits only and exclusively concern incidents that happened during the integration programme, and

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<sup>8</sup> In contrast to a judicial proceedings period, which is considered to be the period until the proceedings are concluded. Cf.: B. Adamiak, J. Borkowski, *Code of Administrative Proceedings. Commentary*. Pub. C.H. Beck, Warsaw 2006, pp. 327-328.

<sup>9</sup> The Ordinance of the Minister of Labour and Social Policy of 1 December 2000 on specific principles regarding granting assistance to refugees, the amount of financial benefits, forms and scope of assistance, mode of proceeding in these matters and also conditions of withholding assistance or refusal to grant it (Journal of Laws 2000, No. 109, item 1160), issued on the basis of Article 24a Section 6 of the Act of 29 November 1990 on Social Assistance. This issue was then regulated by provisions of the Ordinance of the Minister of Social Policy of 29 September 2005 on providing assistance to refugees (Journal of Laws of 2005, No. 201, item 1668 and 1669), issued on the basis of Article 95 Section 2 of the Act of 12 March 2004 on Social Assistance, and in 2008, these provisions were transferred from the *in extenso* Ordinance to the Act (Journal of Laws of 2008, No. 70, item 416).



Article 95 Section 4 point 2 cannot be read in isolation from remaining provisions of this article. The logic of its structure is as follows: Article 95 Section 1 describes reasons for withholding assistance, being a sort of warning to its beneficiaries, and (its consequence) Article 95 Section 4 indicates causes of its definitive termination. These causes are linked to each other and show a certain consistency in the actions of the legislature. Article 95 Section 4 point 1 is a consequence of further violation by the alien of provisions of the agreement entered into in order to realise the *IPI*, mentioned in Article 95 Section 1 points 1-3. In turn, Article 95 Section 4 point 2 is the logical consequence of Article 95 Section 1 point 5 – since assistance for the alien has been stopped for the duration of the criminal proceedings until their conclusion, then acquittal or dismissal or conviction for an unintentional crime leads to resumption of *IPI*; however, a conviction for an intentional crime leads to the consequence indicated in Article 95 Section 4 point 2 - a refusal to provide further assistance. All the situations described above of withholding or refusing to impart assistance concern the duration of the integration programme, and do not relate to any incidents that took place before its commencement.

That this provision only applies to the duration of the integration programme is also indicated by the wording used. The legislature uses the imperfective form in the relevant provisions, talking about refusal “to continue providing integration benefits” (“*udzielanie*”). The term “*udzielanie*” (“to continue providing integration benefits”) unambiguously suggests activity which has already been going on – assistance was being granted, but since in the meantime the alien committed a crime and was convicted, it has been withheld. If the legislature had intended to prevent the granting of the assistance, it should have used the expression “refuse to provide (grant) integration benefits” (“*odmowa udzielenia*”), which indicates that a given activity (providing benefits) has not started yet. In order to understand the correct meaning of Article 95 Section 4 point 2, one can also seek an answer in principles of legislative technique. In accordance with § 55 Section 1 of the Ordinance of the Prime Minister of 20 June 2002 on principles of legislative technique,<sup>10</sup> “Every independent thought is described in a separate article”. In Section 3 of this Article we read “If an independent thought is expressed by a series of statements, then the article is divided into sections (...)” and further “An article is also divided into sections if, between statements

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<sup>10</sup> Journal of Laws 2002, No. 100, item 908.

expressing independent thoughts, content links occur, but the content of none of them is sufficiently significant to place it in a separate article” (§ 55 Section 4). Analysing Article 95 as an editorial unit of the Act and applying the above principles of legislative technique, the “separate idea” - in other words, the possibility of refusal to grant benefits due to conviction for a crime committed before obtaining assistance under the *IPI* - would have to be contained in a separate article. However, since this statement was written down in the next Section of the Article mentioning situations where provision of assistance is withdrawn or suspended in the course of the programme, it should be acknowledged that Article 95 Section 4 point 2 also concerns this period. Interpreting this one point as a situation relating to the period before the start of the programme would be contrary to the above principles.

In addition, there is some doubt as to whether Article 95 Section 2 point 4 of the Act on Social Assistance is consistent with the Polish Constitution, namely with the principle expressed in Article 2 of the rule of law or the principle of equality before the law (32 Section 1 of the Constitution). For Article 95 Section 2 point 4 introduces a kind of additional sanction in the form of denial of integration assistance in the case of conviction for an intentional crime. Bearing in mind the fact that conviction in criminal proceedings is linked with application of a defined sanction in the Criminal Code, then a refusal to grant a defined entitlement due to earlier criminal liability should be considered a double jeopardy, that is, a situation where for one deed, its perpetrator receives a punishment twice. This is difficult to reconcile with the above mentioned constitutional principles.

## **2.2. The practice of declining to grant integration assistance based on analysis of selected cases.**

In order to gain better knowledge about reasons and official justifications for declining to grant integration assistance offered by the public administration authorities, we asked three non-governmental organizations that cooperate with each other on a project related to providing free legal consultations<sup>11</sup> to send us recently issued typical decisions on integration benefits denial. A total of 40 cases from the years 2008-2010 were studied, in which 43

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<sup>11</sup> The three NGO's were the Helsinki Foundation for Human Rights, the Rule of Law Institute Foundation in Lublin, and the Association for Legal Intervention. In 2009, these foundations together provided legal assistance/consultations to 2088 aliens granted international protection (some cases were the same, however, as some clients seek assistance/consultations in multiple organizations).

decisions were issued (out of which 25 decisions were from 2009). Most of the decisions were rendered by authorities of first instance – District (Poviat) Family Support Centres – and in three cases, additionally by Local-government Appeal Courts. The majority of analyzed cases were conducted in the Mazovia region (36) and the remaining four (4) were from Lublin Voivodeship<sup>12</sup>.

*Circa* half of the petitioners described in the decisions were single (at least there was no reference to the petitioner's family in the decision). In two cases, petitions were filed by parents on behalf of minor children in their custody and in one case, the petitioner's family was still undergoing the refugee status recognition procedure and receiving support from the Office for Foreigners. Thus, in the aforementioned three cases, the petitions for integration support were submitted on behalf of one person only. Eighteen (18) petitions were filed on behalf of families of 2-8 members (4.2 persons per family on average). Eight (8) petitioners were single parents (3.12 persons per family on average). In twenty eight (28) cases, the petitioner was a male, in twelve (12) – a female, out of which seven (7) were single mothers. The petitioner was not a Russian Federation citizen in only two cases<sup>13</sup>.

In almost half of the decisions, a denial of integration support in the form of *IPI* was related to a petitioner's conviction history (18 cases<sup>14</sup>); in 21 cases, refusal was based on a petitioner failing to comply with the time limit for filing the petition, and in one case, a denial was a result of social workers' inability to contact the petitioner and to conduct a household interview/assessment<sup>15</sup>.

### **2.2.1. Conviction for an intentional crime as the basis for denial of *IPI***

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<sup>12</sup> The decisions were rendered by different District (Poviat) Family Support Centres, namely in Legionowo, Łukowo, Nowy Dwór Mazowiecki, Piaseczno, Pruszków, Warszawa, Wołomin, and Wyszaków.

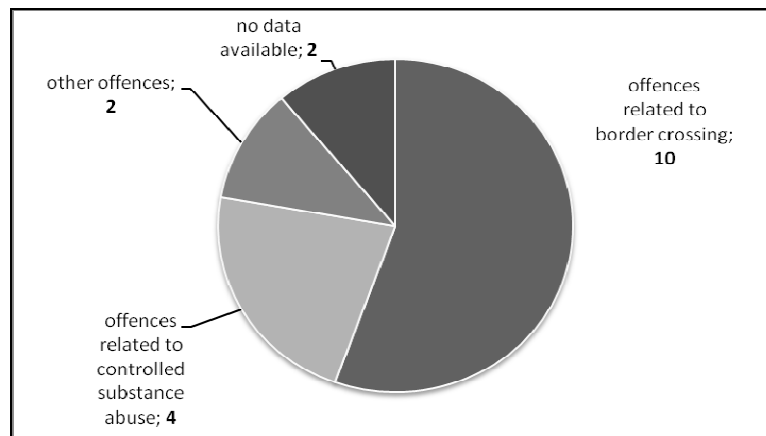
<sup>13</sup> The citizenship of petitioners could be established based on their names. The majority of applicants came from the Russian Republics of the North Caucasus. We could not accurately determine the nationality of the petitioners, however, for it was not included in the decision. For the same reason, we were also unable to establish the nationality of the two remaining petitioners.

<sup>14</sup> In four (4) cases, decisions were rendered in 2010, and in the remaining cases, decisions were made in 2009. Hence, decisions analyzed in this area constitute *circa* one third of all the decisions rendered in connection to a foreigner committing a crime in the year 2009 (cf.: data in Table no. 5).

<sup>15</sup> It should be stressed that social workers dealing with the described case were very persistent in their attempts to contact the petitioner – they visited the address on the application form, tried to make contact by phone, and talked to the petitioner's neighbours and distant family.

When it comes to denials of integration benefits on the grounds of a petitioner's record of conviction for an intentional crime, it is interesting to see to what types of offenders were denied support. Offences to which analyzed decisions referred can be divided into three categories (for details see Figure 1).

**Figure 1. Offences committed by alien petitioners as listed in the analyzed decisions in numbers.**



Source: Own calculations

The most numerous category of the discussed offences is a group which includes incidents linked with illegal border crossings, which is a crime under Art. 264 § 2 of the Polish Penal Code. According to this article, any person who unlawfully crosses the borders of the Republic of Poland using violence, threat, deception, or in cooperation with other persons can be penalized. In the described article, a wide range of behaviors was penalized – from quite serious offences of using violence or a threat, to simple collective (group) border crossing. Of course, without access to the legal acts/case files of the aliens, it is difficult to assess which form of unlawful behaviors they had committed. However, bearing in mind the experiences and border crossing practices of persons granted international protection, it is very rare that they cross borders on their own, especially in view of their family sizes. One can imagine that the most common offence that fulfills the definition of a crime under Art. 264 § 2 of the Penal Code is probably an attempt by a large family to cross by car one of the unpatrolled internal borders of the Schengen area, that is, a border with Germany, the Czech Republic, or Slovakia.

It should also be noted that the most common form of offence relating to an illegal border crossing was decriminalized in 2005<sup>16</sup>. At that time, Art. 264 § 1 of the Penal Code was repealed and a new misdemeanor was introduced in Art. 94a of the Misdemeanors Code. The subject-matter of the offence has not changed despite revisions of the degree of penalization (both provisions were worded in the following way: *Any person who unlawfully crosses the border of the Republic of Poland*). Hence, the legislative intention was to revoke serious consequences for aliens who commit a crime in the form of an illegal border crossing. The legislature decided that such an offence is not serious enough to constitute a crime. In providing grounds for the proposed changes, the legislature conducted an analysis of relevant rulings, which showed an unusually low number of convictions for this crime. Because such an act (of illegal border crossing) “is a typical violation of an administrative order” (...) “proposed regulations will serve the purpose of rationalizing prosecution”<sup>17</sup>.

These changes in law “did not take root” however, and caused officers of the Polish Border Guard to adopt an alternative practice of routinely applying Art. 264 § 2 of the Penal Code and virtually ignoring Art. 49a of the Misdemeanors Code. For the years 2006-2007, the number of misdemeanors under Art. 48a was extremely low, whereas the number of border crossing offences categorized/graded as crimes rose to 2300 cases in 2006. Detailed statistics are included in Table 1<sup>18</sup>. In 2005, 1309 crimes under Art. 264 § 1 of the Penal Code were recorded between January 1 and August 23 and 46 offences under Art. 49a of the Misdemeanors Code were recorded between August 24 and December 31. Thus, according to this data, as many as 96% of all offences were committed during the first eight months of the year.

**Table 1. Foreigners suspected of committing crimes related to unlawful crossing of Polish borders in the years 2000-2008<sup>19</sup>.**

<sup>16</sup> Journal of Laws No. 90, item 757 – the amendments came into force on 14.08.2005.

<sup>17</sup> Cf. Grounds for the government draft of the Act amending the Border Guard Act and other selected Acts, p. 21, *Druk Sejmowy* nr 3348 (Parliamentary Document no 3348) *Sejm IV kadencji* (Parliament 4<sup>th</sup> Term): [http://orka.sejm.gov.pl/Druki4ka.nsf/%28\\$%vAllByUnid%29/430B8805C90F05EBC1256F2D0026834B/\\$file/3348.pdf](http://orka.sejm.gov.pl/Druki4ka.nsf/%28$%vAllByUnid%29/430B8805C90F05EBC1256F2D0026834B/$file/3348.pdf) (accessed on 13.01.2011).

<sup>18</sup> W. Klaus, *Integracja – marginalizacja – kryminalizacja, czyli o przestępczości cudzoziemców w Polsce* (Integration – Marginalization – Criminalization; on foreign crime in Poland), „Archiwum Kryminologii” (Criminology Archives) 2011, vol. XXXII, pp. 91-93.

<sup>19</sup> Statistics based on data conveyed by the Operation and Investigation Board of the National Border Guard Headquarters to the Department of Criminology at the Institute of Law Studies of the Polish Academy of Sciences.

Year	Illegal crossing of Polish borders (Art. 264 § 1 of the Penal Code and Art. 49a of the Misdemeanor Code <sup>20</sup> )	Crossing borders using violence, threat, or deception (Art. 264 § 2 of the Penal Code)	Being a member of a group facilitating illegal border crossing of third persons (Art. 264 § 3 of the Penal Code)
2000	1 121	190	8
2001	719	144	34
2002	577	131	28
2003	845	258	20
2004	2 079	811	69
2005	1 355	1 714	67
2006	119	2 321	101
2007	54	1 673	69
2008	348	970	29

Source: Own calculations using data from the National Border Guard Headquarters

Different grading of the same offences by the National Border Guards may be interpreted as being a result of officers being accustomed to certain routines and procedures that are applicable when a crime is committed. Therefore, convicting an alien of a crime for unlawful border crossing under Art. 264 § 2 of the Penal Code is in itself debatable. One should also remember that a significant number of aliens entering Poland for the first time cross borders illegally, as it is the only way they can escape from their country of origin, where – for example – a military conflict or persecutions by the state authorities are in progress. Initiating criminal proceedings against these persons and then convicting them for illegally crossing the border is unacceptable<sup>21</sup>. For such behaviour raises questions about the rationale of granting international protection by a safe country like Poland. Most of the cases of convictions of foreigners described in this paper, however, probably concern the illegal crossing by them of the Polish border on the way to Western Europe. After returning to Poland under the Dublin regulations, many of them face criminal proceedings for this act. The studies carried out, however, do not allow us to ascertain on what evidence courts based their guilty verdicts and how crossing of the frontier which fulfilled criteria under

<sup>20</sup> Art. 264 § 1 of the Penal Code was repealed on September 24, 2005, and the act of illegal border crossing has since then been penalized under Art. 49a of the Misdemeanors Code.

<sup>21</sup> It should be noted that in some cases the fact of convicting an alien who is applying for international protection in Poland or who has already been granted this protection constitutes in itself a violation of international law, i.e., Article 31 of the 1951 Convention relating to the Status of Refugees. Being a party to the Geneva Convention, Poland is obliged to treat aliens applying for international protection within its territory in accordance with the principles therein. In accordance with Article 31 of the Convention, State Parties shall not impose penalties for illegal entry into or stay in their territory on refugees coming directly from territory in which their life or freedom was threatened, on condition that they report immediately to the authorities and present credible reasons for their illegal entry or stay. A foreigner who without delay reports to Polish authorities and submits an application for refugee status, should not be sentenced by a court for the crime of illegally crossing the border or using a false passport.

Article 264 Section 2 of the Penal Code was proved, i.e. acting in a group or using violence, threats or subterfuge.

However, irrespective of when foreigners have illegally crossed the Polish border, it should be acknowledged that the practice of implementing and interpreting by the public administration authorities of Article 95, Section 4, point 2 of the Act on Social Assistance, leading to declining integration benefits to persons who have committed this type of prohibited act goes against the legislative intent. Furthermore, it distorts the meaning of the provisions of international refugee law, which legally bind Poland, since it results in denial of the opportunity to participate in integration programmes (which are the basic support in the integration process) to most aliens seeking international protection in Poland.

The second category of offences committed by aliens petitioning for integration assistance is related to substance abuse. Possession of small quantities of narcotic drugs and psychotropic substances (Art. 62, Sec. 1 of the Act on Counteracting Drug Addiction<sup>22</sup>) and driving under the influence of alcohol or controlled substances (Art. 178a § 1 of the Penal Code) fall into this category. Each of these offences appeared in two decisions. The reasons why foreigners abuse these substances should be noted, however. The refugees explain it in the following way: "I drink (...) Often (...) I don't know, maybe because of frustration (...) You look at it all, at your life, and you ask yourself, why? (...) My problem is that I ask myself: What am I doing here?"<sup>23</sup> From the interviews with social workers from the asylum seekers (reception) centres, it transpires that at present many residents of such centres abuse drugs and alcohol. The problem of foreigners' living conditions in the reception centres, resulting in frustrations and abuse of various addictive substances, has been pointed out in the literature before.<sup>24</sup> Notwithstanding the validity of penalising criminal offences committed

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<sup>22</sup> Act of 29 July 2005, Journal of Laws No 179, item 1485.

<sup>23</sup> K. Gracz, *Przymusowe migracje a perspektywy wielokulturowości w Polsce*, (*Forced migration and multi-cultural prospects in Poland*) in: A. Gutkowska (ed.), *Uchodźcy w Polsce. Kulturowo-prawne bariery w procesie adaptacji* (*Refugees in Poland. Cultural-legal barriers to the adaptation process*), Warsaw 2007, p. 178 – this is a quotation from an interview carried out with a refugee from Africa.

<sup>24</sup> See: W. Klaus, *Integracja – marginalizacja – kryminalizacja...* (*Integration – marginalization – criminalization...*), pp.100-102.; H. Grzymała-Moszczyńska, E. Nowicka, *Goście i gospodarze. Problem adaptacji kulturowej w obozach dla uchodźców oraz otaczających je społecznościach lokalnych* (*Guests and hosts. Cultural adaptation in refugee camps and neighbouring local communities*), Krakow 1998, pp. 159 et seq.; M. Ząbek, S. Łodziński, *Uchodźcy w Polsce. Próba spojrzenia antropologicznego* (*Refugees in Poland. An anthropological perspective*), Warsaw 2008.

by the foreigners, the question arises as to whether using drugs should result in integration benefits refusal.<sup>25</sup>

The third category of illegal acts referred to in the decisions consists of various criminal offences. One of them is an offence under Art. 270 § 1 of the Penal Code – committing a fraud and using falsified documents. Again, without the case files, it is difficult to describe the offence that was actually committed, but most likely it was using a false passport. It should be noted that this is an act frequently committed by aliens seeking international protection and fleeing from their own country. Another offence is being a member of an organized group or network formed to commit a crime or fiscal crime (Art. 258 § 1 of the Penal Code). This is a serious offence, but from the description of the case included in the decision it transpires that the alien was detained in protective custody only for a limited period of time and then released. This might suggest that the offence was in fact not serious enough to constitute a crime under Art. 258 § 1 of the Penal Code. An example of such an offence is cooperating with at least two other persons to commit a crime, for example, in the form of aiding unlawful border crossing.

It is worth noting that the practice of establishing whether an intentional crime was committed by a foreigner petitioning for integration assistance and (the practice of) refusing to grant benefits in the case of confirmation of such an act having been committed commenced in 2009. Earlier, despite the same regulations being in force essentially from the year 2000, such actions were not undertaken.<sup>26</sup> Social workers were obligated to implement them by the interpretation issued on December 10, 2009 by the Minister of Labour and Social Policy (ref. DPS-II-074/89(2)/5741/JŁ/09) in response to an inquiry by the Department of Social Policy of the Marshal's Office of Mazowieckie Voivodeship.<sup>27</sup> From the interpretation, it follows that during the household interview/assessment, the social worker should establish whether the petitioner has committed a crime. This method was used in three analyzed decisions. After receiving information about possible convictions, the social

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<sup>25</sup> The issue of the legitimacy of penalising for possession of a small amount of narcotics is raised by the authors of the following publication: E. Kuźmicz, Z. Mielecka-Kubień, D. Wiszejko-Wierzbicka (ed.), *Karanie za posiadanie. Artykuł 62 ustawy o przeciwdziałaniu narkomanii – koszty, czas, opinie* (*Punishing for possession. Article 62 of the Act on Counteracting Drug Addiction – costs, time, opinions*), Warsaw 2009.

<sup>26</sup> Earlier they were contained in the above mentioned Ordinances of the Labour Minister .

<sup>27</sup> Available on the Ministry webpage:

[http://www.mpips.gov.pl/\\_download.php?f=userfiles%2FFile%2FDepartament+Pomocy+Spolecznej%2Fcudzoziemcy+uchodzcy%2FpismoMPIPSdoMUW.pdf](http://www.mpips.gov.pl/_download.php?f=userfiles%2FFile%2FDepartament+Pomocy+Spolecznej%2Fcudzoziemcy+uchodzcy%2FpismoMPIPSdoMUW.pdf), (dostęp 12.01.2011 r.)



worker then contacted the appropriate district court or prosecutor in order to confirm this information. In the remaining cases, the respective District (Poviat) Family Support Centre sent an inquiry about the conviction history of the petitioner to the National Criminal Register.<sup>28</sup> This appears to be a standard procedure in respect to all petitioners; such a procedure was followed by all Mazovian centres<sup>29</sup>, with only one exception.

Undoubtedly, an alien is obligated to conform to laws and regulations in force in Poland and ought to bear responsibility for violating them. One should consider, however, whether every committed crime should have the same consequences. What if the crime was committed before receiving international protection in Poland? Is committing an illegal act in the form of unlawful border crossing, addiction and use of drugs, or driving under the influence of alcohol such a serious violation of public order that it should automatically result in depriving an alien of their chances for future integration support? For one should remember that research shows the above to be the most common offences committed by foreigners holding international protection in Poland.<sup>30</sup>

The *ratio legis* behind declining integration assistance to ex-convicts should also be reconsidered. The Act on Social Assistance itself, in Art. 7, point 12, lists persons who have troubles with reintegrating into society after leaving prison as being one of the groups that should be targeted to receive particular support. The question arises as to why support is denied to persons whose offences were less serious, as attested to by the fact that in most cases they received suspended sentences (in nine cases<sup>31</sup>). It is also important to address the issue of what a person and their family whose right to integration support was revoked

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<sup>28</sup> An interviewed social worker from one of the family support centres mentioned a case where they submitted an inquiry to the National Criminal Register (K RK) regarding two persons who were tried and sentenced together. The information received from K RK in response concerned only one person, the other had no record of conviction with K RK. This is a part of a bigger issue concerning the functioning of Polish National Criminal Register, as the information is generally recorded in the system with significant delays and some courts simply do not send information to the Register.

<sup>29</sup> From the content of the decisions (e.g., no. 1) it transpires that the Mazovian Voivodship (Province) Office requires, among other documents, information from the National Court Register to be attached to the application in order to accept an integration programme (in accordance with Art. 93, Section 3 of the Act on Social Assistance),

<sup>30</sup> W. Klaus, *Integracja – marginalizacja – kryminalizacja... (Integration – marginalization – criminalization...)*, pp.108-110, 128-129.

<sup>31</sup> In the remaining decisions, there was either no information about the sentence (4 cases), or the court proceedings were still in progress (2 cases), or a sentence other than imprisonment was handed down, most often a lighter one – a fine or a driving ban (3 cases).

should do next. Is it not actually the case that such a policy is driving these people into the grey economy or criminality?<sup>32</sup>

### **2.2.2. The applicant's whole family suffers the consequences of refusals**

It should also be noted that when Article 95 Section 2 point 4 of the Act on Social Assistance is applied in practice, a sort of collective responsibility is introduced, since in the case of committing an intentional crime by an applicant, integration assistance is also automatically denied to members of the applicant's family who have not received a sentence. This was so in all cases in the analysed decisions. The sentence imposed on the applicant and the negative consequences linked with it automatically affected all persons encompassed by the *IPI* application.

The main idea of the integration programme – as indicated in the name itself – is individualisation of the approach to the foreigner. In the provisions of Chapter 5 of the Act, the legislature uses the term “cudzoziemiec” (“foreigner” or “alien”), and not “wnioskodawca” (“applicant” or “petitioner”) when describing their due rights and obligations. They thus relate to all persons who are in the programme. The wording of Article 91 Section 4 of the Act on Social Assistance clearly specifies that it is the family that has to submit the application. This article therefore does not allow for submission of separate applications by various members of the family. On the other hand, both the applicant and members of their family (of course minors are represented by their parents) are entitled to parties' legal rights. This follows directly from Article 28 of the Code of Administrative Proceedings, which states that everyone to whose legal interests or duties the proceedings relate is a party<sup>33</sup>.

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<sup>32</sup> The results of a lack of appropriate integration can be observed, for example, in the case of the Turkish minority in Holland, whose members have crime commission rates several times higher than Dutch people. We may be dealing both with a certain adaptation by Dutch Turks to such activity and with an example of stigmatisation of its members by society – increasing control over this group and a desire for more frequent punishing of its members, see: M. Korzewski, *O tolerancji w społeczeństwie i prawie holenderskim, (On tolerance in society and Dutch law)* „Nomos”, Krakow 2005, p. 224.

<sup>33</sup> See B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz, (Code of Administrative Proceedings. Commentary)*, Warsaw 1998, p. 215 et seq. It should also be noted that the joint application in proceedings to grant integration assistance has a completely different structure from the joint application in proceedings to grant refugee status in the original version of the Act on granting protection to aliens within the territory of the Republic of Poland of 13 June 2003 (Journal of Laws No. 128, item 1176). In this case, Article 17 Section 4 of the Act on granting protection to aliens within the territory of the Republic of Poland states

Even if we accept for a moment the point of view of the Ministry of Labour and Social Policy that no person who has been sentenced for an intentional crime within the territory of the Polish Republic is entitled to integration assistance, then it should be noted that there is still no reason for the decision not to contain separate entitlements for the applicant, depriving the applicant of assistance, but providing it for remaining members of the applicant's family. Then, of course, a question about conviction history should be sent to all members of the family, including the spouse<sup>34</sup>. For it is worth remembering that the family of the applicant is entitled to integration assistance, stemming from the fact of possessing the appropriate form of international protection and this right cannot be limited due to criminal history of any of the remaining members of the family. So it is impossible to agree with the justification of one of the Local-government Appeal Courts (decision 13b, ref. KO A/2213/Op/10), which states that "the application of the alien, which encompasses the alien's family, should be considered jointly, and the existence of contraindications to granting assistance make it impossible to grant it". For such a formulation can only be applied to the applicant. Neither does joint consideration mean issuing one joint decision with respect to all parties in proceedings – in each case, the matter should be considered individually with respect to each of the family members.

Nor is it possible to agree with the decision of one of the centres (decision no 19), which states that: "in the case of a several-month-old baby, it is not possible to talk about integration. A baby is not able to make use either of Polish language courses or of other forms of assistance offered under the *IPI*." But Article 92 Section 1 of the Act on Social Assistance only mentions examples of forms of integration support (which is attested to in point 6, describing "other activities supporting the integration process"). Such activities may take the form of advice on bringing up or care of the child, placing it in a nursery etc. Besides, one of the forms of support is financial support. From the scientific literature, it transpires that the process of development of the child in the early phase of childhood later

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expressly that only the applicant is a party to the proceedings. This has caused interpretational divergences as to whether this article precludes the application of Article 28 Code of Administrative Proceedings or not (cf. J. Chlebny (ed.), *Prawo o cudzoziemcach. Komentarz*, (Law on aliens. Commentary,) Warsaw 2006, pp. 440-442). In the case of the Act on Social Assistance, there is no such legislation, so there is no doubt that all persons encompassed by the application are parties to the proceedings.

<sup>34</sup> It refers to persons who can be punished, and so in accordance with provisions of Article 10 § 2 Penal Code, it also refers to minors who have committed one of the most serious crimes mentioned in this article at the age of 15 or over.

influences its whole life, and therefore also its later education – which includes integration into society. Hence, support is unusually important in this period, especially nutrition etc. This is ensured by, amongst other things, resources from the integration programme.

Under the current legal system in Poland, a collective punishment cannot be imposed on all members of the family of a convicted person without individually considering the situation of each person. Polish law does not provide for this type of collective liability. Meanwhile, such practices by government agencies amount to application of principles of collective responsibility, which is unacceptable in a democratic state ruled by law. This is above all contrary to Article 2 of the Polish Constitution, expressing the principle of a democracy and rule of law and the principle of social justice, which prohibit applying collective responsibility. Such practices are furthermore inconsistent with Article 7 of the Constitution – the principle of legalism and also Article 32 of the Constitution – the principle of equality. Such practice also violates the constitutional principle of citizen's trust in the state and civil law, which prohibits creation of grossly unjust laws. Besides, by attributing collective responsibility to the alien's whole family, their legal capacity as natural persons is negated. For natural persons have the right to a fair and open hearing of their case by an independent and impartial court. This right is one of the universal guarantees of the legal safety of the individual, foreseen in provisions such as Article 45 Section 1 of the Constitution. For one cannot punish without ensuring procedural guarantees, and applying a refusal to all members of a family due to only one member's conviction for a crime deprives these people of such guarantees and constitutes a sort of verdict of their collective guilt.

It should also be emphasized that there is a lack of any rational justification for a situation in which the family of a foreigner – the perpetrator of an intentional crime - should not be encompassed by an integration programme, and thus should be refused the right to integration in Poland. It is worth adding that in the near future, this issue will be settled by the Supreme Administrative Court – a complaint prepared by the Association for Legal Intervention was filed in September 2010.

### **2.2.3. Failure to meet the statutory deadline for submitting an application**

A very common reason for refusing to provide integration assistance is exceeding the deadline for submitting an application. Amongst studied decisions, there were 21 such cases. The shortest delay period was 8 days and the longest – 395 (the average was 95 days). These decisions can be divided into two groups. The first is failure to meet the deadline for submitting an application after conversion of the former tolerated stay into subsidiary protection. As we mentioned, the legislator in the amendment of the Act on granting protection to aliens within the territory of the Republic of Poland acknowledged that new beneficiaries of integration support can submit applications in this matter by a non-extendable deadline of 29.08.2008, i.e., within 3 months of entry into force of provisions of the amendment. After this deadline passes, their right to the integration programme expires. Amongst the studied cases, as many as 13 concerned exceeding of this deadline (the shortest delay was 25 days, the longest 395, average 115 days).

It is worth asking what the point was of introducing this non-extendable deadline for submitting an application. Unfortunately in the justification for the amendment, there is no explanation for it. It would seem that structuring this provision in this way was a mistake. We do not know why it was assumed that potential beneficiaries of the introduced provisions would obtain information about new rights granted to them within 3 months of their entry into force. The question arises as to where they would actually obtain this information from. Furthermore, from analysis of the decision and description of the situation of persons applying for assistance who submitted their application after the deadline, it transpires that they were in great need of assistance. Another problem that can be seen in the content of the decision is the way of delivering a decision about granting tolerated stay. Many foreigners did not know the date of receiving a decision and it was necessary for Family Assistance Centres to carry out evidential proceedings in cooperation with the *UdSC* (Office for Foreigners) in order to establish the date of delivery.

In one of the analysed decisions (no. 33), a female foreigner collected a decision granting tolerated stay on 12.08.2008. She submitted an application for integration assistance in the appropriate district centre on 29.09.2008, thus meeting the 30 day deadline described in the Act on Social Assistance. Meanwhile, it turned out that since the decision in her case (issued on 14.02.2008) was a decision that “still” granted tolerated stay, and not “yet” subsidiary protection – although the form of protection granted to her by law

transformed from one form into another – the actual deadline for submitting an application for integration assistance was suddenly 17 days! Unfortunately, the responsibility for the whole statutory confusion was borne by the foreign female, who was not, of course, in a position to differentiate between the two forms of protection and interpret the statutory changes in this area (incidentally, one has to wonder why delivery of the decision by one agency to a person under its care lasted half a year)<sup>35</sup>.

It is also interesting to take a look at arguments of authorities that inform persons about exceeding the time limit. For there are discrepancies in this field – including within the framework of one centre and between decisions issued in one time period – in 2008 and 2009. In some decisions, the authority expressly indicates a violation of a substantive law deadline and expiration of entitlement to assistance (6 cases); however, in some of them it talks about exceeding a deadline and not submitting an application to extend it or rejecting a request for extending a deadline due to weak grounds (8 cases)<sup>36</sup>.

9 cases of non-compliance with a 60 day deadline for submitting an application were also analysed. The extent to which it was exceeded was decidedly lower and amounted to from 8 to 136 days (58 days on average; in two cases it was impossible to establish the number of days).

### **3. STATISTICAL DATA OBTAINED FROM INSTITUTIONS IMPLEMENTING THE *IPI***

According to data from the Ministry of Labour and Social Policy, in the years 2006-2009, a total of 1241 families received integration assistance. It should be remembered that assistance is granted not only to the alien applying for it, but also to their minor children and spouse on condition that they have refugee status or subsidiary protection. This means that in the space of 4 years, as many as 3414 persons took part in the *IPI*. The greatest number of programmes was granted in 2008. Then as many as 677 families (1754 persons) received

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<sup>35</sup> A different, very unusual case from the practice of the Association for Legal Intervention can be described, where a decision to grant tolerated stay was successfully delivered to the party on 30.08.2008. Thus, through no fault of the party, the party was deprived of the possibility of participating in the *IPI*, because the party could not submit an appropriate application without possessing a final decision in the party's case.

<sup>36</sup> In the remaining cases, the deciding body did not refer to the issue of the possibility of extending the deadline, but just ascertained that it had been exceeded.

integration support<sup>37</sup>. Table no. 2 presents detailed data concerning the number of granted benefits in the years 2006-2009.

**Table no. 2. Number of families and also persons in families receiving *IPI* benefits in the years 2006-2009.**

Voivodeship (province)	2006		2007		2008		2009		2006-2009	
	Number of families	Number of persons in families	Number of families	Number of persons in families	Number of families	Number of persons in families	Number of families	Number of persons in families	Number of families	Number of persons in families
Dolnośląskie	1	5	3	7	0	0	2	4	6	16
Kujawsko-pomorskie	0	0	0	0	0	0	0	0	0	0
Lubelskie	10	36	18	55	56	183	4	11	88	285
Lubuskie	0	0	0	0	0	0	0	0	0	0
Łódzkie	2	12	1	7	2	4	3	8	8	31
Małopolskie	0	0	0	0	0	0	0	0	0	0
Mazowieckie	167	490	149	446	442	1103	76	169	834	2208
Opolskie	0	0	0	0	0	0	0	0	0	0
Podkarpackie	0	0	0	0	0	0	0	0	0	0
Podlaskie	50	159	37	120	159	415	13	39	259	733
Pomorskie	0	0	1	2	0	0	1	8	2	10
Śląskie	0	0	0	0	5	23	9	43	14	66
Świętokrzyskie	0	0	0	0	0	0	0	0	0	0
warmińsko-mazurskie	0	0	1	1	3	3	0	0	4	4
Wielkopolskie	0	0	0	0	5	7	2	4	7	11
Zachodniopomorskie	3	7	1	2	5	16	10	25	19	50
<b>TOTAL</b>	<b>233</b>	<b>709</b>	<b>211</b>	<b>640</b>	<b>677</b>	<b>1754</b>	<b>120</b>	<b>311</b>	<b>1241</b>	<b>3414</b>

Source: Information obtained from the Ministry of Labour and Social Policy

### 3.1. Reasons for refusing to grant assistance under the *IPI*

In order to determine the number of persons applying for integration assistance and the number of rejected applications<sup>38</sup>, we sent a letter to over 50 social assistance institutions (District Family Support Centres (*PCPR*) and also City Family Support Centres (*MOPR*)) requesting statistical data concerning execution of the programme in the years 2006-2009. While collecting research material, a problem with categorisation of certain cases arose amongst certain institutions implementing the *IPI*. It also turned out that applications that were rejected in a given calendar year might have been submitted in the previous year. Another issue was the fact of social assistance institutions passing on *IPI* applications

<sup>37</sup> This high number is due to the fact that in 2008, the right to integration assistance was extended to persons who had earlier been granted tolerated stay, on condition that they applied for *IPI* by 29.08.2008, as described above.

<sup>38</sup> Due to a final sentence for an intentional crime or failure to meet the deadline for applying for integration assistance.

amongst themselves. For there are situations where a foreigner submits an application for integration assistance in one institution, and in the meantime changes their place of residence. Then their application is passed on to the appropriate institution in the new place of residence.

After obtaining statistical data, in order to supplement them, four interviews were carried out with employees of social assistance institutions responsible for processing applications for granting integration support. In the course of interviews, issues such as the following were raised: the most frequent reasons for rejecting applications, problems occurring during processing of applications and tendencies observed in recent years.

As data collected by us show (Table no. 3), in the years 2006-2009, 2153 applications for assistance under the *IPI* were received by District Family Support Centres (*PCPR*) and also Social Assistance Centres. This means that 5966 persons applied for integration support. About 17% of all applications were negatively assessed.

**Table no. 3. Number of applications for participation in the *IPI* and the number of rejected applications for years 2006-2009 in terms of numbers of families and persons<sup>39</sup>.**

Year	Number of applications for participation in the <i>IPI</i> (number of families)	Number of rejected applications (number of families)	Number of applications for participation in the <i>IPI</i> (number of persons)	Number of rejected applications (number of persons)
2006	132	4	397	12
2007	104	18	308	43
2008	805	73	2088	160
2009	1112	264	3173	575
<b>Total</b>	<b>2153</b>	<b>359</b>	<b>5966</b>	<b>790</b>

Source: Own calculations based on data from District Family Support Centres and Social Assistance Centres.

As has already been mentioned, submission of an application for the *IPI* by an alien more than 60 days<sup>40</sup> (or 90 days in 2008, i.e., up to 29 August 2008) from delivery of a decision concerning granting of refugee status or subsidiary protection within the territory of the Polish Republic and also a conviction history are the two most common reasons for

<sup>39</sup> The Table does not contain data from *MOPR* Lublin, *PCPR* Wołomin or *PCPR* Zambrów, as they were not sent to us.

<sup>40</sup> It is worth noting that the sixty day deadline for submitting an application for assistance has been legally binding since 20 July 2007. Earlier, from 2004 until the aforementioned date, a foreigner had 14 days for submission, and between 2001 and 2004 – 30 days. Furthermore in 2008, from the moment at which persons with tolerated stay became eligible for integration assistance the legislature allowed them a 90 day deadline for submitting an application to have this integration assistance granted, as described above.



rejecting *IPI* applications, on which our study focuses. In both cases, as can be clearly seen, their number has risen. According to collected data, in 2006, there were no refusals to grant *IPI* due to exceeding the application deadline, whilst in 2009, they constituted as many as 16% of all negative decisions. Table no. 4 presents the percentage and numerical distribution of the above mentioned causes of rejecting applications for participation in the *IPI* in the years 2006-2009.

**Table no. 4. Reasons for rejecting applications for participation in the *IPI* expressed as a percentage and in numbers in the years 2006-2009<sup>41</sup>.**

Year	Reasons for rejecting applications in % and also numbers			
	Submission by the alien of an application for <i>IPI</i> after the 60 day deadline from delivery of decision on achieving refugee status/ granting subsidiary protection within the territory of the Polish Republic;		Refusal to grant assistance due to conviction of alien for an intentional crime (Article 95 Section 4 point 2 of the Act on Social Assistance).	
2006	0%	0	0%	0
2007	11%	2	11%	2
2008	11%	8	9%	6
2009	16%	40	17%	44
<b>Total</b>	<b>14%</b>	<b>50</b>	<b>15%</b>	<b>52</b>

Source: Own calculations based on data from *PCPR* (District Family Support Centres) and *OPS* (Social Assistance Centres).

In the opinion of employees of institutions of social assistance processing applications (with whom we conducted interviews) aliens have sufficient knowledge on the subject of participation in the *IPI*<sup>42</sup>. They receive written information concerning their obligations and rights, including the possibility of applying for integration assistance. However, it sometimes happens that applicants change address of residence, without informing the relevant offices of it or while waiting for the decision leave their place of residence for some time. After two weeks have passed, in accordance with the law, the decision is considered to have been successfully delivered, although the addressee may never have collected it. However, as one *PCPR* employee claims, news travels very fast

<sup>41</sup> The Table does not contain data from *PCPR* Wołomin.

<sup>42</sup> Although this is contradicted by studies that have been carried out – see M. Pawlak, N. Ryabinska, *Dlaczego uchodźcy „nie chcą” się integrować w Polsce? Ocena skuteczności programów integracyjnych z punktu widzenia uchodźców*, (Why do refugees "not want" to integrate in Poland? Assessment of the effectiveness of integration programmes from the point of view of refugees) in: Frelak J., Klaus W., Wiśniewski J. (ed.), *Przystanek Polska. Analiza programów integracyjnych dla cudzoziemców w Polsce*, (Next stop Poland. Analysis of refugee integration programmes), Instytut Spraw Publicznych (Institute of Public Affairs), Warsaw 2007, pp. 124-129.

amongst foreigners via the “grapevine”. Employees of institutions of social assistance in the conducted interviews, considered it wrong that a foreigner, having exceeded the 60 day application deadline through no fault of their own, did not have the right to receive integration assistance.

As mentioned earlier, in 2008 there was a sudden increase in submitted applications. This was caused by a change in the form of international protection afforded to some of the aliens from tolerated stay to subsidiary protection. This change enabled them to apply for integration support. These persons had 90 days from entry into force of the Act<sup>43</sup> to submit an application in this matter (the deadline was 29 August 2008). Many persons did not manage to complete the formalities in this period. One of the respondents admits that persons who had the right to apply for the *IPI* were not sufficiently well informed about the principles of applying for it.

Similarly to the case of exceeding the deadline for completing formalities linked with the application for the *IPI*, there was a clear increase in number of refusals to grant assistance in connection with convicting an alien for an intentional crime. In the course of four years, this cause was responsible for 15% of rejections of *IPI* applications. According to information obtained from employees of social assistance institutions, the most frequent cases of breaking the law by foreigners related to illegal group crossings of the border (which corresponds to the results of analyses of decisions presented above). Employees of social assistance institutions perceive this crime as fairly harmless, claiming additionally that foreigners are not always aware of the potential consequences of their act. Crimes mentioned more rarely by interviewed persons were: theft, drug trafficking, smuggling of people or driving under the influence of alcohol. In the opinion of our respondents, such action is extremely unfair to foreigners, since a person who has committed a crime, when submitting an application on behalf of their whole family, unconsciously condemns them to not being able to apply for *IPI* support.

Social assistance institutions obtain information on the subject of a foreigner’s conviction history by sending a request to the National Criminal Register in the course of processing applications for *IPI* assistance. However, as our study has shown, institutions of social assistance do not send such requests to the National Criminal Register in all

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<sup>43</sup> Article 20 Section 1 of the Act amending the Act on granting protection to foreigners within the territory of the Republic of Poland and also some other acts, Journal of Laws 2008, No. 70, item 416.

voivodeships (provinces). According to information obtained during interviews, in some voivodeships (provinces), institutions of social assistance obtain information on the subject of conviction history of applicants simply on the basis of the aliens' statements. The negligible number of rejected applications in certain voivodeships (e.g., Śląsk voivodeship) can be explained, according to respondents, by, amongst other things, the lack of obligation to send a request to the National Criminal Register. Another cause of this phenomenon is probably the lack of incisiveness of social workers processing the applications.

If the institution receives feedback that an alien applying for *IPI* support about has committed a crime, their whole family will be encompassed by a refusal to grant assistance (even though other members of the family have not committed a crime). In this situation, the whole family automatically loses the right to receive integration assistance. Furthermore, one of our interviewees noted that the procedure of sending requests to the National Criminal Register in many cases unnecessarily prolongs the procedure of processing the case.

According to the collected data, an application is also rejected when a family that has finished the programme applies for granting of *IPI* on behalf of a newly born child. Integration assistance may be granted to a child on condition that it has reached the age of 13, for officials consider that a small child cannot independently "participate in" a programme (this topic is more broadly discussed in chapter 2). In accordance with the law (Article 91 Section 11 of the Act on Social Assistance) foreigners whose spouses have Polish citizenship also receive negative decisions. Even when persons are in a difficult material situation, they are not entitled to financial assistance or any other benefits from the programme, not even Polish language lessons (which, in the opinion of respondents would in many cases be very useful). Those cases in which a foreigner, after submitting an application, never again presented themselves to an institution of social assistance, are also categorised as rejected applications (by institutions of social assistance). This is caused in most cases by foreigners leaving Poland.

### **3.2. Reasons for withholding *IPI* assistance**

From statistical data for the years 2006-2009, it transpires that besides refusal to grant *IPI*, an equally significant problem is its interruption. A frequent practice amongst foreigners is going away to another country in the course of the programme, which leads to withholding

assistance. A programme is also interrupted when a foreigner does not fulfil the obligation of contact twice a month with a designated social assistance institution employee. Sometimes foreigners decide to undertake paid work, which makes it impossible for them to attend Polish language classes. However, in interviews, social workers themselves admit that they do not always follow up on such non-compliance, since they know that having work is very important for foreigners and it sometimes helps in the practical learning of the Polish language. Institutions of social assistance point to - as a general reason for suspending provision of assistance - situations where foreigners, after previous withholding of assistance (followed by reinstatement), again do not fulfil obligations required under the programme (Article 95 Section 4 point 1 of the Act on Social Assistance). An increase in the number of such cases can be observed from year to year.

**Table no. 5. Refusals to grant assistance in connection with a conviction of a foreigner for an intentional crime<sup>44</sup>.**

Year	The number of cases where a crime was committed by a foreigner in the course of the <i>IPI</i>	The number of cases where a crime was committed by a foreigner before submitting an application for <i>IPI</i>	The number of cases where the granting of assistance to a foreigner was withheld on the basis of Article 95 Section 1 point 5 of the Act on Social Assistance.
2006	0	0	1
2007	0	2	0
2008	3	3	1
2009	10	37	5
<b>razem</b>	<b>13</b>	<b>42</b>	<b>7</b>

Source: Own calculations based on data from *PCPR* and *OPS*

In accordance with the law, the reason for which integration assistance should be suspended is initiation and conduct of criminal proceedings against the foreigner. Reinstating integration assistance is denied in cases where a foreigner has been convicted by a court in the course of participating in the *IPI*. However, as our interviews showed, institutions of social assistance find out about such situations sporadically (for details concerning this issue see Table no. 5). Knowledge on the subject of a crime committed in the course of *IPI* is mainly obtained by institutions of social assistance during household interviews/assessments. They usually find out about them by chance, when, for example, someone is arrested and the family turns to an institution of social assistance for help or during contact with Police officers or Border Guards. One of the respondents admitted that

<sup>44</sup> The Table does not contain data from *PCPR* Wołomin.

although foreigners participating in the *IPI* had a duty to inform the institution of social assistance about important life issues, it had not yet happened that someone on their initiative had reported a crime committed by themselves.

### **3.3. Summary**

The respondents in our study were social workers who process applications for granting assistance under the *IPI*. The institutions where they work receive the greatest number of integration assistance applications in the country annually. Learning about their experiences with regard to processing these applications was for us exceptionally valuable, since it allowed us to complement the collected statistical data and enabled us to get a better view of this phenomenon in practice.

In the opinion of respondents, there are several problems linked with the issue of accessibility of the *IPI* which are worth focusing on in more detail. Respondents regard the practice of withholding integration benefits from the whole family when one member of the family has committed a crime as being particularly harmful (to foreigners). The disqualification of foreigners due to illegal border crossing seems incomprehensible to them. Unclear legislation constitutes another problem, in the opinion of respondents. The law can be differently interpreted depending on the voivodeship (province) or powiat (district). An example of this is actions taken with respect to persons convicted of an intentional crime.

## **4. SUMMARY AND CONCLUSIONS**

Having studied the decisions and drawing on our earlier analysis of the legal regulations, it transpires that the interpretation of Article 95 section 4 point 2 of the Act on Social Assistance issued by the Ministry of Labour and Social Policy is flawed and should not be the basis for refusing to grant integration assistance to foreigners under international protection. District family assistance centres are not bound by it either, for in accordance with the Polish legal system, the Ministry is not authorised to issue legally binding interpretations of regulations.

The practice of issuing a decision concerning all members of the applicant's family is also wrong – not only in the area of refusal to grant benefits due to a conviction history, but in every case of withholding and also possible later refusal to reinstate assistance, resulting

from the content of Article 95 of the Act on Social Assistance. The decision should concern each of the persons covered by the application separately. An integration programme indicating rights and obligations of members should be worked out for each of them. This results from the the fundamental concept underlying this programme<sup>45</sup>. Suspending the programme just because one of the persons does not comply with its provisions, but the remainder are in compliance with their obligations, is inconsistent with its aim and with regulations about the individual responsibility of each person for their activity. And thus such action should be prohibited.

Furthermore, in order to prevent cases of noncompliance by foreigners with the deadline to submit an application to grant integration assistance, any decision granting one of the forms of international protection should be accompanied by compulsorily attached information about the right to integration assistance – written in a simple way and in language understandable to the foreigner (which, given the nationality structure of persons applying for refugee status in Poland is not an especially difficult or expensive procedure)<sup>46</sup>.

It should be emphasised that the integration programme is a special benefit granted to aliens in order that they can learn Polish, find work, accommodation and function normally in Polish society. This is very important not only from the point of view of the foreigner, but also the receiving country. Denying integration assistance may lead to even greater marginalisation and exclusion of these persons. It should be remembered that Article 95 Section 4 point 2, due to the fact that it contains a kind of sanction, in the form of depriving of the right to integration assistance, cannot be interpreted broadly. The more so because this consequence in practice does not concern just the applicant, but also the rest of their family, including children, who cannot be accused of having committed a crime.

Furthermore, one must not forget that a significant fraction of foreigners do not understand – especially at the early stage of their stay in Poland – principles/rules that are legally binding in Poland. They originate from countries where – in the best case – there is a

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<sup>45</sup> More on this subject in: J. Frelak, W. Klaus, *Rekomendacje i dobre praktyki (Recommendations and Good Practice)*, in: J. Frelak, W. Klaus, J. Wiśniewski (ed.), *Przystanek Polska. Analiza programów integracyjnych dla cudzoziemców w Polsce (Next stop Poland. Analysis of refugee integration programmes)*, Instytut Spraw Publicznych (Institute of Public Affairs), Warsaw 2007, pp. 247-262.

<sup>46</sup> See recommendations in the report: *Być uchodźcą. Życie uchodźców i osób starających się o nadanie statusu uchodźcy w Europie Środkowej, (Being a refugee. The life of refugees and persons applying for refugee status in Central Europe)* UNHCR, Budapest, August 2010 .

different legal system, and in the worst – there is lawlessness or war. Illegal crossing of a border is not perceived by them as a crime, but is a method for getting to a place where security and a decent life for themselves and their family will be assured.

Besides, sometimes aliens leave their home and country on – quite literally – a day-to-day basis, in order to save their own and their families' lives. This usually means that they are not able to arrange all the formalities or to collect and take with them the necessary documents. It is also sometimes the case that, due to persecution, an alien cannot use their real passport and in order to leave the country is forced to use false documents. Furthermore, it is worth noting that foreigners who have committed an intentional crime before submitting an application for integration assistance, due to ignorance of the Polish legal reality, are not aware that apart from a criminal penalty, they may encounter an additional consequence in the form of refusal to grant integration assistance. Thus, when applying for assistance they should be mandatorily advised of the possibility of proceedings being suspended for the duration of criminal proceedings and also of refusal to grant integration support in the case of being convicted of committing an intentional crime. And it should be noted that from analysis of the decisions, it transpires that most of them commit deeds which are not considered crimes everywhere, hence some of these people may simply not know that they are unlawful in Poland. This circumstance should be taken into account<sup>47</sup>.

Thus, if one were to accept the interpretation applied by the authorities that when issuing a decision in the matter of imparting assistance under the integration programme for foreigners, the time of committing an offence is not significant, then almost no refugee who had managed to get to Poland without a valid visa or else on the basis of false documents

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<sup>47</sup> It is worth generally looking at the issue of how Polish courts should proceed in relation to perpetrators from other cultures, in which a given deed is not considered to be against the law or customs of the given culture. The question arises here as to whether the perpetrator was aware of this difference, what punishment to impose for committing this deed (should it be different for a Pole and a foreigner, taking into account cultural differences and their relation to a given behaviour?). Deliberations on the nature of so-called *cultural defence* are only at the initial phase of development in Polish legal thought; however, in the future, as more migrants come to Poland, they will certainly become increasingly relevant – compare, e.g., O. Sitarz, *Culture defence a polskie prawo karne* (Culture defence and Polish Criminal Law), „Archiwum Kryminologii” (Criminology Archives) 2009, vol. XXIX-XXX, p. 643 et seq.; A.D. Renteln, *The Use and Abuse of the Cultural Defence*, „Canadian Journal of Law and Society” 2005, vol. 1, p. 47 et seq.; B. Janiszewski, *Orzekanie kar i innych środków wobec cudzoziemców* (Ruling on punishments and other measures against foreigners), in: A. J. Szwarc (ed.), *Przestępczość przygraniczna. Postępowanie karne przeciwko cudzoziemcom w Polsce* (Border area crime. Criminal Proceedings against Foreigners in Poland), Poznań 2000, pp. 176-178.

could claim support – which is amongst persons leaving their country due to persecution a rule rather than an exception.

It also sometimes happens that the reason for a decision by foreigners to go “further West” is the lengthening waiting time for a final decision in the procedure to grant refugee status, stress linked with this and the fear that they will not receive protection in Poland and will have to return to their country of origin. This period of suspension often results in frustration and lack of motivation to undertake any actions, including learning about the new living environment, Polish culture and customs. It makes foreigners feel that Poland is just a transitory state and they are not connected to our country or bound by its laws. After receiving a positive decision they are even more in need of support in the form of an integration programme, thanks to which they will more quickly become acquainted with the legal system of the receiving country, will be aware of their obligations and the law and, consequently, will not violate its provisions.



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